

# COUNTY OF YORK

## MEMORANDUM

**DATE:** September 4, 2001 (BOS Mtg. 9/18/01)

**TO:** York County Board of Supervisors

**FROM:** James E. Barnett, County Attorney

**SUBJECT:** Resolutions Authorizing Modification of Joint Waterfront Development Agreement with Yorktown Trustees and Authorizing Execution of Conveyance of Title to Freight Shed Building

Included in your Board package are two resolutions relative to the development of the Yorktown waterfront. One makes a slight modification to the Joint Development Agreement with the Yorktown Trustees dated May 7, 2001, to accommodate (if necessary) the County's use of historic building renovation tax credits as a vehicle for reducing the cost for the relocation and restoration of the Yorktown Freight Shed. The other resolution authorizes the County Administrator to execute a joint deed between the County, the Trustees, and the United States Park Service, actually conveying title to the Freight Shed from the Park Service to the Trustees, and thence from the Trustees to the County. Both actions were already approved by the Trustees at their meeting of August 16, 2001, and we have been advised orally that the United States Park Service is also prepared to sign the joint deed.

The proposed modifications to the Joint Agreement are found in paragraph 6 (B) (on page 9 of the agreement) and paragraph 10 (D) (on page 12 of the agreement). These modifications would allow the County, or an entity to be formed by the County, to hold title to the Freight Shed building beyond the term of the agreement, up to a period of 45 years, in the event that the County seeks to utilize historic building preservation tax credits when relocating and renovating the Freight Shed building. Although the County is not, obviously, a taxpaying entity, there are provisions of both state and federal tax law which allow local governments, when renovating certain historic structures, to accumulate transferable tax credits which can then be sold to the private sector, thereby generating revenue to the locality and offsetting certain of the costs of renovation. The use of such tax credits is fairly new, and has been attempted by only a few Virginia localities at the present time, typically with the assistance of outside tax counsel and a consultant to ensure compliance with applicable tax codes and to assist in marketing the transferable tax credits. However, according to information we have received from a consultant who has assisted several Virginia localities in this process, the County will most likely be required to transfer title to the Freight Shed building either to the IDA or a limited partnership or not for profit corporation of the County's creation in such a fashion that the IDA/corporation/partnership must be guaranteed in its title for a period of up to 45 years. That is not to say that title must be retained for that period of time, but the IDA/corporation/partnership must be assured that it can retain title for that period if required by applicable tax codes. The proposed modifications to paragraphs 6 (B) and 10 (D) of the Joint Agreement (copies attached) indicate that title to the Freight Shed need not be re-conveyed to the

Trustees at the conclusion of the 30 to 35 year term of the agreement, but can be retained for as long as 45 years, if the County has chosen to utilize the historic building renovation tax credits.

Secondly, the Joint Agreement already specifies in paragraph 6 (B) that the Board has been granted the exclusive right to use, occupy and control the Freight Shed, but that the Trustees would, at the County's request, also transfer title to the building to the County. When the Trustees initially approved the joint agreement, by a 3-2 vote, there were insufficient votes among the Trustees to meet the requirements of Code of Virginia § 15.2-2100 for conveyance by a town of an interest in its property, such statute requiring a three-fourths vote (or four of the five Trustees). A simple majority, however, was sufficient to convey to the County the exclusive right to use and occupy the building. Since that time, the composition of the Board of Trustees has changed, and at its meeting of August 16, 2001, the Yorktown Trustees, by unanimous vote, agreed to convey title to the building to the County. (The Trustees' resolution also reconfirmed and readopted the agreement, as modified, by a vote of all five Trustees.) As the Board is aware, the United States Park Service has insisted upon a number of conditions being attached to its release of title to the Freight Shed relative to the renovation and restoration of the building. Those provisions were the subject of lengthy negotiations between County staff, a representative of the Yorktown Trustees, and the Park Service, and I am advised that all of the conditions are acceptable to Robert S. Kraus, Director of the County's Yorktown revitalization effort, and to the County Administrator. A copy of the proposed agreement is attached.

The adoption of Resolution R01-155 will authorize the execution of the amended joint agreement with the Trustees, and the adoption of Resolution R01-156 will authorize execution of the three-way agreement regarding transfer of title to the Freight Shed.

Barnett/3340:sw  
Attachments